

Report of the Chief Executive

PROPOSED STOPPING UP OF UNREGISTERED PUBLIC RIGHT OF WAY – LAND SOUTH EAST OF B&M STYRING STREET AND STATION ROAD, BEESTON

1. Purpose of report

This item is brought to Committee to make a Stopping Up Order under the Town and Country Planning Act 1990 following an application received by the Council for a public path diversion order to stop up the footpath adjoining the building currently occupied by B&M Stores running from Styring Street to Station Road at the side of the former bus station.

2. Details

The application to stop up the footpath has been submitted in order to enable development to take place on land shown edged red on the attached plan. This encompasses phase 2 of the Beeston Square Re-development.

Full planning permission was granted on 13 September 2018 (planning reference:18/00360/FUL) for the construction of a cinema and commercial units (detailed scheme) and outline permission for mixed use development to include residential dwellings, car parking, commercial units and assembly and leisure units with ancillary areas (plant and bin stores etc).

The existing footpath to be stopped up is approximately 75m in length and 1.5 metres wide forming an uneven bricked 'pavement' which runs along the side of the B&M Stores building from Styring Street to Station Road forming a 'cut-through' for pedestrians from the tram stop to the Tesco Store. This 'pavement' lies directly beneath the footprint of the proposed development.

It is proposed that the new cinema complex, bars and restaurant directly adjoin the existing building and over the land currently forming the 'footpath'. If the footpath is not stopped up the existing footpath would lie directly between the current B&M building and the newly built cinema complex forming a dark 'tunnel like' passageway lacking natural surveillance which would pose health and safety risks to users, particularly late at night and potentially attract antisocial behaviour because of the sheltered nature of path making it highly undesirable.

As part of the new development there are plans to create an outdoor open area which would provide direct access from Styring Street to Station Road, re-linking the bus and tram interchange with the Tesco store.

3. Planning Considerations

Section 257 of the Town and Country Planning Act 1990 states that a competent Authority may by Order authorise the stopping up or diversion of

any footpath if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with a planning permission. The procedure for doing so is set out in Schedule 14 of the Town and Country Planning Act 1990.

S7.15 of the Rights of Way Circular (1/09) advises that in the making of an order for the diversion of a Public Right of Way to enable approved development:

‘The local planning authority should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order.

The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.’

S7.8 of the Rights of Way Circular (1/09) states:

‘In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estates paths through landscaped or open space areas away from vehicular traffic’.

The main planning considerations in the determination of this application are that the existing footpath would cause safety issues for users with the potential increase of anti-social behaviour if the footpath were not stopped up.

There are alternative routes to the proposed path closure which run through The Square and along Middle Street.

Once the development is complete, users will be able to use the newly created public realm which is proposed to run through the centre of the development and will provide access already referred to above. This route will be much wider and more attractive than the present route which will provide a safe, well lit, even route which will be wider than the footpath to be stopped up and so more accessible and useable for those with impaired mobility.

Legal Considerations

Following pre-order consultations carried out by the developer, s257 of the Town and Country Planning Act 1990 gives the Council (as the local planning authority), a discretionary power to make an Order for the stopping up or

diversion of a footpath which is necessary to enable development to be carried out in accordance with planning permission. On making the Order, a public Notice describing the Order must be advertised in the press and the Order placed on deposit for public inspection. This public notice and Order map must also be placed at each end of the length of public footpath to be diverted. Owners of the land affected by the Order and various statutory consultees must be contacted and served with the Order and Notice and allowed the opportunity to make objections within 28 days from the making of the Order. If no objections are made the Order may then be recommended for confirmation as an unopposed order. The Order does not become effective until it has been confirmed. Any opposed Orders are sent to the Secretary of State for determination.

On confirmation of the Order similar steps to those outlined above must be repeated enclosing a copy of the Confirmed Order. Objectors may challenge the confirmation in the High Court within six weeks after Notice of the Confirmation is published on the grounds that the Confirmation is outside the Council's powers or that there has been a procedural defect. The Stopping Up Order does not come into effect until the Council certifies that the provisions of the Order have been complied with.

In these circumstances, a footpath Stopping Up Order is necessary to allow an authorised development to be carried out.

Recommendation

The committee is asked to RESOLVE that the Stopping Up Order be made.

Background papers

Nil